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Attorneys for Defendant Select Portfolio Servicing, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

TERRI KWAKE, an individual and citizen
of the State of Oregon,

Plaintiff,

v.

SELECT PORTFOLIO SERVICING, INC.;
a Utah Corporation,

Defendant.

Case No.: 6:15-CV-01713-MC

DEFENDANT SELECT PORTFOLIO
SERVICING, INC.'S ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT AND
AFFIRMATIVE DEFENSES

Defendant Select Portfolio Servicing, Inc. ("SPS" or "Defendant") hereby answers
Plaintiff Terri Kwake's First Amended Complaint [Dkt. 10] ("FAC") as follows:

I. JURISDICTION & VENUE

1. Paragraph 1 states a legal conclusion to which no response is required.
2. Paragraph 2 states a legal conclusion to which no response is required.

II. PARTIES

3. SPS admits the allegations in Paragraph 3.
4. SPS is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4.

III. FACTS

A. Response to Factual Background

5. SPS admits that both SPS and Bank of America N.A. (“BOA”) have acted as the servicers for Plaintiff’s loan and that only SPS has been named as a defendant. SPS denies the remaining allegations in Paragraph 5.

6. SPS admits the allegations in Paragraph 6.

7. SPS is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 and, therefore, denies the same.

8. SPS is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8, and, therefore, denies the same.

9. SPS admits that BOA transferred the servicing rights to Plaintiff’s loan to SPS. SPS is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 9.

10. SPS is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10.

B. Response to Actionable Facts

11. SPS is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 and, therefore, denies the same.

12. SPS is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and, therefore, denies the same.

13. SPS is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and, therefore, denies the same.

14. Responding to Paragraph 14, SPS admits that Exhibit 1 of the FAC speaks for itself. To the extent a further response is required, SPS denies the allegations in Paragraph 14.

15. Answering Paragraph 15, SPS states that Exhibit 1 to the FAC speaks for itself. To the extent a further response is required, SPS denies the allegations in Paragraph 15.

16. Answering Paragraph 16, SPS states that Exhibit 1 to the FAC speaks for itself. To the extent a further response is required, SPS admits that Exhibit 1 contains a “Savings Example.” SPS denies the remaining allegations in Paragraph 16.

17. Answering Paragraph 17, SPS states that Exhibit 1 to the FAC speaks for itself. To the extent a further response is required, SPS denies the allegations in Paragraph 17.

18. SPS admits that Plaintiff sent some information in response to SPS’s October 9, 2013 letter. SPS denies the remaining allegations in Paragraph 18.

19. SPS admits that on or about October 16, 2013, it sent Plaintiff an Incomplete Information Notice. SPS denies the remaining allegations in Paragraph 19.

20. SPS admits that Plaintiff sent in additional information to SPS at some point after October 16, 2013. SPS denies the remaining allegations in Paragraph 20.

21. Answering Paragraph 21, SPS states that Exhibit 2 to the FAC speaks for itself.

To the extent a further response is required, SPS denies the allegations in Paragraph 21.

22. SPS denies the allegations in Paragraph 22.

23. SPS denies the allegations in Paragraph 23.

24. SPS denies the allegations in Paragraph 24.

25. Responding to Paragraph 25, SPS admits that the Consumer Financial Protection Bureau issued revised regulations at 12 CFR § 1024.41, which speak for themselves. To the extent a further response is required, SPS denies the remaining allegations in Paragraph 25.

26. SPS denies the allegations in Paragraph 26.

27. SPS denies the allegations in Paragraph 27.

28. SPS denies the allegations in Paragraph 28.

29. SPS is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 29 and, therefore, denies the same.

30. SPS admits that it was never a party in the potential class action case referenced by Plaintiff in Paragraph 30. Plaintiff is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 30 and, therefore, denies the same.

31. Responding to Paragraph 31, SPS denies that Exhibit 1 of the FAC promises Plaintiff any loan modification or other loss mitigation option. SPS is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 31 and, therefore, denies the same.

32. SPS is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32.

33. SPS admits that Plaintiff is seeking damages in this lawsuit, but denies that she is entitled to any damages. SPS denies the remaining allegations in Paragraph 33.

IV. RESPONSE TO CLAIMS FOR RELIEF

RESPONSE TO FIRST CLAIM FOR RELIEF

34. SPS denies the allegations in Paragraph 34.

35. SPS denies the allegations in Paragraph 35.

36. SPS denies the allegations in Paragraph 36.

37. SPS denies the allegations in Paragraph 37.

38. SPS denies the allegations in Paragraph 38.

RESPONSE TO SECOND CLAIM FOR RELIEF

39. SPS reasserts and incorporates by reference its responses to Paragraphs 1 through 38 of the FAC.

40. Paragraph 40 states a legal conclusion to which no response is required. To the extent that a response is required to Paragraph 40, those allegations are denied.

41. SPS denies the allegations in Paragraph 41.

42. SPS denies the allegations in Paragraph 42.

43. SPS denies the allegations in Paragraph 43.

44. Paragraph 44 states a legal conclusion to which no response is required. To the extent that a response is required to Paragraph 44, those allegations are denied.

45. SPS denies the allegations in Paragraph 45.

46. Paragraph 46 states a legal conclusion to which no response is required. To the extent that a response is required to Paragraph 46, those allegations are denied.

47. SPS is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47.

48. SPS denies the allegations in Paragraph 48.

49. Paragraph 49 states a legal conclusion to which no response is required. To the extent that a response is required to Paragraph 49, those allegations are denied.

50. SPS denies the allegations in Paragraph 50.

RESPONSE TO THIRD CLAIM FOR RELIEF

51. SPS reasserts and incorporates by reference its responses to Paragraphs 1 through 50 of the FAC.

52. SPS denies the allegations in Paragraph 52.

53. SPS denies the allegations in Paragraph 53.

54. SPS denies the allegations in Paragraph 54.

55. SPS denies the allegations in Paragraph 55.

56. SPS denies the allegations in Paragraph 56.

57. SPS denies the allegations in Paragraph 57.

IV. PRAYER FOR RELIEF

58. The Prayer for Relief states legal conclusion to which no response is required. To the extent that a response is required to the Prayer for Relief, those allegations are denied.

DEFENSES AND AFFIRMATIVE DEFENSES

Having fully answered the FAC, SPS asserts the following defenses and affirmative defenses:

59. Plaintiff fails to state a claim upon which relief may be granted.

60. Plaintiff's claims are barred by the equitable doctrines of estoppel, waiver, laches, and/or collateral estoppel.

61. Plaintiff's claims are barred because she failed to join indispensable and/or necessary parties as defendants in this matter.

62. Plaintiff's claims are barred by the applicable statutes of limitation or repose.

63. Plaintiff's claims are barred because she has not suffered any injury-in-fact.

64. Plaintiff's claims are barred to the extent that damages are the result of acts or omissions committed by Plaintiff.

65. Plaintiff's claims are barred because she failed to submit a complete and/or timely loan modification application.

66. SPS respectfully reserves the right to amend its Answer to Plaintiff's FAC to add such additional defenses, affirmative defenses, cross-claims, counterclaims, and/or third-party claims as may be necessary based on discovery.

WHEREFORE, SPS respectfully prays for the following relief:

1. Dismissal of Plaintiff's FAC with prejudice;
2. An award of costs and fees to SPS; and
3. An award of all such other and further relief to SPS as the Court deems just and equitable.

DATED: November 19, 2015.

STOEL RIVES LLP

/s/ Amy Edwards

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was filed electronically this 19th day of November, 2015. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's ECF system.

STOEL RIVES LLP

/s/ Amy Edwards

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